

Executive Summary – Enforcement Matter – Case No. 44056
B-S CARTAGE, INC. dba J-V Dirt and Loam
RN101495976
Docket No. 2012-0898-MSW-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

J-V Dirt and Loam, 3600 North Farm-To-Market Road 973, Austin, Travis County

Type of Operation:

Composting facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 26, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$11,780

Amount Deferred for Expedited Settlement: \$2,356

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$9,424

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN – Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002 and September 2011

Executive Summary – Enforcement Matter – Case No. 44056
B-S CARTAGE, INC. dba J-V Dirt and Loam
RN101495976
Docket No. 2012-0898-MSW-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 13, 2011 and March 13, 2012

Date(s) of NOE(s): April 9, 2012

Violation Information

1. Failed to prevent the discharge of material to or the pollution of surface water or groundwater as a result of the beneficial use or reuse and recycling of material. Specifically, piles of processed and unprocessed bulking materials were observed in two separate ponds at the Facility [30 TEX. ADMIN. CODE § 332.4(3)].
2. Failed to meet the recycling rates relating to limitations on storage of recyclable materials. Specifically, Respondent had accumulated approximately 50,000 cubic yards of bulking materials that did not meet the 50% recycling rate [30 TEX. ADMIN. CODE §§ 328.4(b) and 332.23(5)].
3. Failed to report any updates or changes to information contained in the site report within 90 days of the effective date of the change. Specifically, Respondent accepted and/or composted fruits, vegetables, lumber, and pallets, which are not listed as either feedstocks or bulking agents in Respondent's composting Notice of Intent ("NOI") [30 TEX. ADMIN. CODE §§ 328.5(b)(4) and 332.23(5)].
4. Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors. Specifically, Respondent does not have financial assurance for its NOI [30 TEX. ADMIN. CODE §§ 328.5(d), 332.23(5), and 37.901].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require Respondent to:

- a. Within 30 days:
 - i. Develop and implement procedures to prevent the discharge of materials into surface waters or ground water;
 - ii. Remove all bulking materials from the ponds and dispose of them properly;

Executive Summary – Enforcement Matter – Case No. 44056
B-S CARTAGE, INC. dba J-V Dirt and Loam
RN101495976
Docket No. 2012-0898-MSW-E

- iii. Develop and implement procedures to meet the recycling rates relating to limitations on storage of recyclable materials;
 - iv. Update all changes to materials accepted in the Facility's NOI;
 - v. Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility; and
- b. Within 45 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Clinton Sims, Enforcement Division,
Enforcement Team 6, MC 128, (512) 239-6933; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: David Herrmann, President, B-S CARTAGE, INC., 5005 West Avenue,
San Antonio, Texas 78213
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	9-Apr-2012
	PCW	1-May-2012
Screening		26-Apr-2012
EPA Due		

RESPONDENT/FACILITY INFORMATION

Respondent	B-S CARTAGE, INC. dba J-V Dirt and Loam	
Reg. Ent. Ref. No.	RN101495976	
Facility/Site Region	11-Austin	Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No.	44056	No. of Violations	2
Docket No.	2012-0898-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Clinton Sims
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum		\$0	Maximum
			\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$125
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Notes: Enhancement for one NOV with same/similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$5,484
Approx. Cost of Compliance: \$5,100
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	208.8%	Adjustment	\$5,480
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.

Final Penalty Amount	\$8,105
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,105
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,621
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$6,484
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Screening Date 26-Apr-2012

Docket No. 2012-0898-MSW-E

PCW

Respondent B-S CARTAGE, INC. dba J-V Dirt and Loam

Policy Revision 3 (September 2011)

Case ID No. 44056

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101495976

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date 26-Apr-2012

Docket No. 2012-0898-MSW-E

PCW

Respondent B-S CARTAGE, INC. dba J-V Dirt and Loam

Policy Revision 3 (September 2011)

Case ID No. 44056

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101495976

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 328.5(b)(4) and 332.23(5)

Violation Description

Failed to report any updates or changes to information contained in the site report within 90 days of the effective date of the change. Specifically, the Respondent accepted and/or composted fruits, vegetables, lumber, and pallets, which are not listed as either feedstocks or bulking agents in the Respondent's composting Notice of Intent ("NOI").

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

	Major	Moderate	Minor
Release			
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

44 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$4,053

This violation Final Assessed Penalty (adjusted for limits) \$4,053

Economic Benefit Worksheet

Respondent B-S CARTAGE, INC. dba J-V Dirt and Loam
Case ID No. 44056
Req. Ent. Reference No. RN101495976
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$100	13-Mar-2012	15-Dec-2012	0.76	\$4	n/a	\$4
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update the NOI. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 26-Apr-2012

Docket No. 2012-0898-MSW-E

PCW

Respondent B-S CARTAGE, INC. dba J-V Dirt and Loam

Policy Revision 3 (September 2011)

Case ID No. 44056

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101495976

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 328.5(d), 332.23(5), and 37.901

Violation Description

Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors. Specifically, the Respondent does not have financial assurance for its NOI.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

44

Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	X
single event	

Violation Base Penalty \$1,250

One annual event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5,480

Violation Final Penalty Total \$4,053

This violation Final Assessed Penalty (adjusted for limits) \$4,053

Economic Benefit Worksheet

Respondent B-S CARTAGE, INC. dba J-V Dirt and Loam
Case ID No. 44056
Req. Ent. Reference No. RN101495976
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$5,000	13-Mar-2011	13-Mar-2012	1.92	\$480	\$5,000	\$5,480
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for the closure of the Facility. The Date Required is one year prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance

\$5,000

TOTAL

\$5,480



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned PCW	9-Apr-2012	Screening	26-Apr-2012	EPA Due	
		1-May-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	B-S CARTAGE, INC. dba J-V Dirt and Loam		
Reg. Ent. Ref. No.	RN101495976		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	44056	No. of Violations	2
Docket No.	2012-0898-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Clinton Sims
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$3,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **5.0%** Enhancement **Subtotals 2, 3, & 7** **\$175**

Notes Enhancement for one NOV with same/similar violations.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts \$529
Approx. Cost of Compliance \$5,500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$3,675**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$3,675**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$3,675**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$735**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$2,940**

Screening Date 26-Apr-2012

Docket No. 2012-0898-MSW-E

PCW

Respondent B-S CARTAGE, INC. dba J-V Dirt and Loam

Policy Revision 2 (September 2002)

Case ID No. 44056

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101495976

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one NOV with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 26-Apr-2012

Docket No. 2012-0898-MSW-E

PCW

Respondent B-S CARTAGE, INC. dba J-V Dirt and Loam

Policy Revision 2 (September 2002)

Case ID No. 44056

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101495976

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 332.4(3)

Violation Description

Failed to prevent the discharge of material to or the pollution of surface water or groundwater as a result of the beneficial use or reuse and recycling of material. Specifically, piles of processed and unprocessed bulking materials were observed in two separate ponds at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

	Major	Moderate	Minor
Release			
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

44 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the March 13, 2012 investigation to the April 26, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$48

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent B-S CARTAGE, INC. dba J-V Dirt and Loam
Case ID No. 44056
Reg. Ent. Reference No. RN101495976
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$500	13-Jan-2011	15-Dec-2012	1.92	\$48	n/a	\$48
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the bulking materials from the ponds and dispose of them properly, and to develop and implement procedures to prevent the discharge of materials into surface water or ground water. The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$48

Screening Date 26-Apr-2012

Docket No. 2012-0898-MSW-E

PCW

Respondent B-S CARTAGE, INC. dba J-V Dirt and Loam

Policy Revision 2 (September 2002)

Case ID No. 44056

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101495976

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 328.4(b) and 332.23(5)

Violation Description Failed to meet the recycling rates relating to limitations on storage of recyclable materials. Specifically, the Respondent had accumulated approximately 50,000 cubic yards of bulking materials that did not meet the 50% recycling rate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

44 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the March 13, 2012 investigation to the April 26, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$481

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent B-S CARTAGE, INC. dba J-V Dirt and Loam
Case ID No. 44056
Req. Ent. Reference No. RN101495976
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$5,000	13-Jan-2011	15-Dec-2012	1.92	\$481	n/a	\$481
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement procedures to ensure that recycling rates relating to limitations on storage of recyclable materials are met. The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$481

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600783658	B-S CARTAGE, INC.	Classification: AVERAGE	Rating: 3.00
Regulated Entity:	RN101495976	J-V DIRT AND LOAM	Classification: AVERAGE	Site Rating: 3.00
ID Number(s):	AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION		ACCOUNT NUMBER REGISTRATION	TH0218F 66224
	MUNICIPAL SOLID WASTE PROCESSING MUNICIPAL SOLID WASTE PROCESSING		REGISTRATION PERMIT	47021 2310
Location:	3600 N FM RD 973, AUSTIN, TX, 78725			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	April 19, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 19, 2007 to April 19, 2012			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Clinton Sims	Phone:	(512) 239-6933	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If YES, who is the current owner/operator? N/A
4. If YES, who was/were the prior owner(s)/operator(s)? N/A
5. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 03/30/2011 (891168)
 - 2 04/05/2012 (989690)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

03/31/2011 (891168)	CN600783658
Self Report? NO	Classification: Moderate
Citation: 30 TAC Chapter 332, SubChapter A 332.4(3)	
Description: Failure to comply with 30 TAC Chapter 332.4(3) states that the discharge of material to or the pollution of surface water or groundwater as a result of the beneficial use or reuse and recycling of material is prohibited.	
Self Report? NO	Classification: Moderate
Citation: 30 TAC Chapter 328, SubChapter A 328.4(b) 30 TAC Chapter 332, SubChapter B 332.23(5)	
Description: Failure to comply with 30 TAC Chapter 332.23(5) which states a facility shall be subject to the requirements of §328.4 (relating to Limitations on Storage of Recyclable Materials) and §328.5 (relating to Reporting and Recordkeeping Requirements).	

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
B-S CARTAGE, INC. DBA J-V
DIRT AND LOAM
RN101495976**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2012-0898-MSW-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding B-S CARTAGE, INC. dba J-V Dirt and Loam ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a composting facility at 3600 North Farm-To-Market Road 973 in Austin, Travis County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 14, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eleven Thousand Seven Hundred Eighty Dollars (\$11,780) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Nine Thousand Four Hundred Twenty-Four Dollars (\$9,424) of the administrative penalty and Two Thousand Three Hundred Fifty-Six Dollars (\$2,356) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent the discharge of material to or the pollution of surface water or groundwater as a result of the beneficial use or reuse and recycling of material, in violation of 30 TEX. ADMIN. CODE § 332.4(3), as documented during investigations conducted on January 13, 2011 and March 13, 2012. Specifically, piles of processed and unprocessed bulking materials were observed in two separate ponds at the Facility.
2. Failed to meet the recycling rates relating to limitations on storage of recyclable materials, in violation of 30 TEX. ADMIN. CODE §§ 328.4(b) and 332.23(5), as documented during investigations conducted on January 13, 2011 and March 13, 2012. Specifically, the Respondent had accumulated approximately 50,000 cubic yards of bulking materials that did not meet the 50% recycling rate.
3. Failed to report any updates or changes to information contained in the site report within 90 days of the effective date of the change, in violation of 30 TEX. ADMIN. CODE §§ 328.5(b)(4) and 332.23(5), as documented during an investigation conducted on March 13, 2012. Specifically, the Respondent accepted and/or composted fruits, vegetables,

lumber, and pallets, which are not listed as either feedstocks or bulking agents in the Respondent's composting Notice of Intent ("NOI").

4. Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors, in violation of 30 TEX. ADMIN. CODE §§ 328.5(d), 332.23(5), and 37.901, as documented during an investigation conducted on March 13, 2012. Specifically, the Respondent does not have financial assurance for its NOI.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: B-S CARTAGE, INC. dba J-V Dirt and Loam, Docket No. 2012-0898-MSW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Develop and implement procedures to prevent the discharge of materials into surface waters or ground water, in accordance with 30 TEX. ADMIN. CODE § 332.4(3);
 - ii. Remove all bulking materials from the ponds and dispose of them properly;
 - iii. Develop and implement procedures to meet the recycling rates relating to limitations on storage of recyclable materials, in accordance with 30 TEX. ADMIN. CODE §§ 328.4(b) and 332.23(5);

- iv. Update all changes to materials accepted in the Facility's NOI, in accordance with 30 TEX. ADMIN. CODE §§ 328.4(b)(4) and 332.23(5);
- v. Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 328.5(d), 332.23(5), and 37.901 to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.v. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Austin Regional Office, MC R11
Texas Commission on Environmental Quality
PO Box 13807
Austin, Texas 78711-3087

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God,

war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam Javie
For the Executive Director

12/21/12
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

[Signature]
Signature

8/27/12
Date

David Hammer
Name (Printed or typed)
Authorized Representative of
B-S CARTAGE, INC. dba J-V Dirt and Loam

President
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.